

Virginia Regulatory Town Hall

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Pesticide Control Board
Virginia Administrative Code (VAC) citation	2 VAC 20-20 and 2 VAC 20-25
Regulation title	Rules and Regulations for Enforcement of the Virginia Pesticide Law, and Rules and Regulations for the Registration of Pesticides and Pesticide Products in Virginia
Action title	Incorporate sections of regulation into a new regulation specifically relating to the registration of pesticides and pesticide products
Document preparation date	September 28, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purposes of the proposed action are to repeal sections of 2 VAC 20-20 dealing with the registration of pesticides and pesticide products, and to review the regulation for effectiveness and continued need. The Pesticide Control Board (Board) will also promulgate a new regulation that prescribes the requirements for the registration of pesticides and pesticide products in Virginia. Some of the remaining portions of the enforcement sections of 2 VAC 20-20 will be amended to clarify enforcement requirements.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The basis for this regulation is §3.1-249.30.2.; §3.1-249.30.9.; and §3.1-249.35 through 3.1-249.45 of the Code of Virginia.

§3.1-249.30.9 authorizes the Board to promulgate regulations that it deems necessary or convenient to carry out the purposes of Chapter 14.1.

Specifically, §3.1-249.35 requires that every pesticide which is manufactured, distributed, sold, or offered for sale, used or offered for use within the Commonwealth shall be registered in accordance with regulations adopted by the Board.

In addition, §3.1-249.36 authorizes the Commissioner to register and permit the sale and use of any pesticide which has been registered under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended.

§3.1-249.29.9 authorizes the Board to require that individuals who sell, store or apply pesticides commercially observe appropriate safety practices.

§3.1-249.30.9 authorizes the Board to promulgate regulations as necessary or convenient to carry out the purposes of the chapter.

§3.1-249.63.B.7 declares that it is a violation to store or dispose of containers or pesticides by means other than those prescribed on the label or adopted regulation.

§3.1-249.64.A declares that it is unlawful for any person to use or cause to be used any pesticide in a manner inconsistent with its labeling or regulations of the Board, as well as to dispose of containers or unused portions of pesticides in a manner that inconsistent with label directions or the regulations of the Board which may restrict such disposal. The authority in the statute exceeds federal authority in one specific area: Under Section 152.25 (g) of Title 40 of the Code of Federal Regulations, an exemption to required registration is described as provided for in section 25 (b) of FIFRA. Under this section, certain substances described as Minimum Risk Pesticides do not have to be registered with U.S. Environmental Protection Agency (EPA) as long as they meet certain conditions. Virginia statute authority does not provide for such an exemption if the substance meets Virginia’s definition as a “pesticide.”

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

Amend 2 VAC 20-20-10 to delete language that is outdated and inaccurate. Specifically, the listing of prairie dogs which are nonexistent in Virginia.

Repeal the following sections of 2 VAC 20-20:

2 VAC 20-20-30 through 2 VAC 20-20-90;

2 VAC 20-20-120 through 2 VAC 20-20-130; and

2 VAC 20-20-180 through 2 VAC 20-20-200.

These sections will be incorporated into a new regulation 2 VAC 20-25 that deals specifically with the registration of pesticides and pesticide products.

Amend 2 VAC 20-20-210 to more clearly outline when certain end-use dilution containers must meet labeling requirements and when they are considered a part of commercial application businesses.

Adopt new regulations as 2 VAC 20-25 that deal with all aspects of the registration of pesticides and pesticide products in Virginia. The new regulation will help to ensure that every pesticide which is manufactured, distributed, sold, or offered for sale, used or offered for use within the Commonwealth is registered; establish standards for registering pesticide products in the Commonwealth; and establish clear procedures for registering pesticide products within the Commonwealth. Specifically, the sections that will be included are: definitions; requirements and procedures for registering pesticide products; reasons and procedures for denying registration of products; reasons and procedures for revocation of product registrations; requirements and procedures for pesticide product experimental use or research; requirements for supplemental distributor labels; label requirements for pesticide products; requirements and procedures for special local need registrations; requirements and procedures for emergency exemptions from registration; requirements and procedures for pesticide product registration renewals; requirements and procedures for discontinuing the registration of pesticides; and provisions and procedures for requesting additional information from product registrants. Other amendments would include provisions dealing with pesticide product storage and disposal as well as other appropriate safety practices. The promulgation of a regulation concerning pesticide product discontinuance may come under

scrutiny. The Board has determined that the proposed regulatory action is essential to protect the health, safety or welfare of citizens because improperly labeled pesticides, as well as unregistered pesticides and pesticide products, can lead to human health problems, even death, if application, mixing, storing, and disposal instructions are ambiguous or misleading. Consumers may also believe they are buying a product with certain ingredients when the product may in fact contain completely different ingredients or different percentages of ingredients than stated on the label. Ambiguous instructions on applying, mixing, storing, and disposal of pesticide products may also cause severe environmental damage.

Registration of pesticides in Virginia ensures that such products meet labeling and safety standards of both Virginia and the U.S. EPA.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The only known alternative to this proposed action would be for Virginia to do away with its own enforcement regulation and regulations related to pesticide product registration. In that case, regulatory oversight of pesticide matters in Virginia would revert to the U.S. EPA, an alternative that was rejected because most Virginia growers and pesticide-related businesses prefer to be regulated at the state level. Regulatory oversight of pesticide-related activities in Virginia by a state agency achieves environmentally sound results that are in concert with Virginia needs. Furthermore, the regulation allows state personnel to enforce pesticide-related federal laws and regulations in Virginia.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

None of the proposed regulatory actions are expected to impact negatively the institution of the family and family stability, including rights of parents in the education, nurturing, and supervision of their children, nor economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. The actions also will not erode marital commitment or decrease disposable family income.